IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3745 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHUPAT TALSHIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3745 of 2001

MS KD PARMAR for Petitioner No. 1

MR BINODA GAJJAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 13/09/2001

ORAL JUDGEMENT

1s. In exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Antisocial Activities Act, 1985 ('the Act' for short), the Commissioner of Police, Rajkot City, Rajkot, vide order dated February 14, 2001, Annexure A to the petition, detained the

petitioner - detenu.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority considered the detenu as a dangerous person within the meaning of section 2 (c) of the Act and as three cases for the commission of the offences under Chapter 17 of the Indian Penal Code are registered against the detenu which are pending for trial and statements of two witnesses are recorded, according to the detaining authority, the activities of the detenu are prejudicial to the maintenance of public order and claiming privilege under Section 9 (2) of the Act by not disclosing the identity of the witnesses, the detaining authority detained the detenu.

3. By filing this petition under Article 226 of the Constitution, the detenu has assailed the order of detention on various grounds and prayed to issue appropriate writ, direction or order quashing and setting aside the impugned order of detention dated February 14, 2001 and to set the detenu at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Parmar, learned advocate for the petitioner, has restricted her arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority for the delay and contended that the order of detention is vitiated. According to her, three offences which are registered against the petitioner are of the year 2000 and the last of these offences is registered on August 26, 2000 and, therefore, it cannot be said that the petitioner has involved in the activities which are prejudicial to the maintenance of public order. So far as the statements of two witnesses with respect to which privilege under Section 9 (2) of the Act is claimed is concerned, she contended that in the absence of the reply affidavit of the detaining authority, the privilege is not rightly claimed. She therefore urged to quash and set aside the order of detention and to set the petitioner at liberty.

5. Though no reply affidavit is filed, Ms. Gajjar, learned AGP who appears on behalf of the respondents opposed the petition by making oral submissions. She however does not dispute the factual aspect of delay in passing the order of detention as the last offence against the petitioner is recorded on August 26, 2000 and the delay in passing the order is not explained by the detaining authority. She however contended that the

detaining authority has considered the statements of the witnesses and came to the conclusion that the fear expressed by the witnesses is correct and genuine and therefore exercised the privilege under Section 9 (2) of the Act by not disclosing the identity of the witnesses which cannot be called arbitrary or unjust. She, therefore, urged to dismiss the petition.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed thereto and the impugned order of detention.

7. There is no manner of doubt that all the three offences registered against the petitioner are of the year 2000 and of these offences, the last offence is registered on August 26, 2000 whereas the order of detention came to be passed on February 14, 2001. Therefore, there is a delay of more than five months in passing the order of detention.

8. In the case of Anand Prakash v. State of UP, AIR 1990 SC 516, it has been held by the Supreme Court that stale material cannot be considered for detention and if satisfactory explanation is not given by the detaining authority for the delay in passing the impugned order of detention, the order of detention is vitiated. Similar view is expressed by this Court in Elesh N. Patel v. Commissioner of Police, 1997 (1) GLH 381.

9. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgments to the facts of the present case, there is no dispute that there is a delay of more than five months in passing the order of detention and, therefore, unexplained delay makes the grounds of detention not proximate and vitiates the order of detention itself.

10. So far as the statements of two witnesses are concerned, the detaining authority has claimed privilege under Section 9 (2) of the Act by not disclosing identity of the witnesses but in absence of reply affidavit of the detaining authority it cannot be considered that the detaining authority has rightly claimed the privilege. Therefore, on this ground also the order of detention is vitiated. Therefore, the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned order of detention dated February 14, 2001 is quashed and set

aside. The petitioner - detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)